

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 339

Citations Affected: IC 7.1-1-3-18.5; IC 7.1-2; IC 7.1-3; IC 7.1-4-8-2; IC 7.1-5; IC 9-21-4-5; IC 34-30-2-19.5.

Synopsis: Alcoholic beverage matters. Conference committee report for ESB 339. Defines "grocery store" for purposes of the law concerning alcohol and tobacco. Allows the alcohol and tobacco commission (ATC) to renew or transfer ownership of a beer dealer's permit for a beer dealer who: (1) held a permit before July 1, 2007; and (2) does not qualify for a permit as a grocery store. Requires the ATC to: (1) conduct random unannounced inspections of locations where alcoholic beverages are sold or distributed; and (2) investigate the desirability of a permit in regard to the potential geographic location of the permit. Allows a person at least 18 years of age and less than 21 years of age to receive or purchase alcoholic beverages as part of an enforcement action. Changes the quota provision for liquor dealers and beer dealers and provides for five new liquor dealers and beer dealers permits under certain circumstances. Provides for graduated civil penalties against a permittee for repeat violations of furnishing alcohol to a minor on the licensed premises and for the collected penalties to be deposited in the enforcement and administration fund. Requires a member of a local board to complete a training program to educate the member on alcoholic beverage law and the operation of the board and the ATC. Requires a local board member to be removed if the member does not complete the training within six months after the member is appointed. Provides that members appointed before January 1, 2008, have until July 1, 2008, to receive training. Requires a local board to allow all individuals attending a public local board meeting or hearing to make oral comments at the meeting or hearing regarding the subject of the meeting or hearing. Removes the limits on the number of guests and duration of an event where an excursion and adjacent landsite permit holder provides alcoholic beverages to guests without charge. Requires the commission to give notice: (1) by mail to the local board that an objection has been filed and the date of any appeal hearing set by the commission; and (2) by publication of the date of any appeal hearing set by the commission. Allows a small brewery to sell and deliver beer to a consumer. Removes a provision that allows a large brewery to sell and deliver beer to a consumer. Prohibits a beer wholesaler from selling beer to a consumer other than an employee. Allows liquor retailers and liquor dealers to provide six ounce samples of flavored malt beverages and hard cider. Establishes requirements for a wine wholesaler to resell wine purchased at an estate sale.

Provides a wholesaler with immunity from product liability for wine that was purchased at an estate sale. Allows the governor to issue an executive order waiving the hours of service restrictions regarding sales of alcoholic beverages on Sunday by retailers if the state or a municipality hosts an event that has the potential to benefit the state and local economy, and other criteria is satisfied. Provides that if a beer wholesaler's warehouse is transferred, the warehouse does not have to be transferred to a location within an incorporated area. Provides that a seller does not violate the law if the seller sold and shipped wine directly to a consumer before January 15, 2007, and did not fulfill the seller's obligation to obtain confirmation of age and provide the name and address of the consumer to the commission before January 15, 2007. Allows money deposited in the postwar construction fund to be used for construction for the use of state public safety institutions. Requires criteria established jointly by the Indiana department of transportation and the office of tourism development for tourist attraction signage to include a category for a tourist attraction that is a small brewery. Requires alcoholic beverage sales in a drug store or grocery store to be rung up by a sales clerk who has alcohol server training. Increases the penalty for furnishing an alcoholic beverage to a minor to a Class B misdemeanor if the person is an adult. Allows the sale of alcoholic beverages on New Year's day for off premises consumption. Allows the commission to issue three way permits to a restaurant in an economic development project that meets certain requirements. Requires 15 days (instead of 30 days) notice of a permit application investigation. Allows the commission to increase the number of beer dealer and liquor dealer permits based on certain population data in between decennial censuses. **(This conference committee report removes provisions that: (1) Eliminate residency requirements for dealers. (2) Allow a local board to give greater weight to oral comments provided by a person who owns or operates a business, owns real property, or resides within 1,000 feet of the requested location of an alcoholic beverage permit. (3) Provide that in investigating the desirability of the location of a grocery store or package liquor store permit, the commission may consider the number of existing grocery store and package liquor store permits within 1,000 feet of the proposed location. (4) Change the notice requirements for new permits and permit transfers. (5) Allow a local board to appoint at least one attorney to assist the local board in fulfilling its duties. (6) Require a liquor dealer (other than a package liquor store) to display liquor: (1) in a clearly separated area that prohibits the presence of a minor unless the minor is accompanied by a parent or guardian; and (2) display liquor more than 15 feet from a public entrance. (7) Make it a Class D felony for a wholesaler to sell an unauthorized brand of alcoholic beverages and allows an injured permittee to bring a civil action against the wholesaler. (8) Prohibit a permittee from knowingly or intentionally coercing another permittee to enter into an agreement or take an action that violates the alcoholic beverage statutes and rules. (9) Require alcoholic beverage sales in a drug store or grocery store to be rung up by a sales clerk who: (1) has an employee permit; and (2) is at least 19 years of age. (10) Allow the ATC to issue five additional alcoholic beverage permits to restaurants located in the following: (A) An economic development area in Clarksville in Clark County. (B) A redevelopment project areas in Carmel. (11) Allow the ATC to issue not more than eight new three-way permits within economic development areas near Schererville. This conference committee report: (1) allows the commission to issue three way permits to a restaurant in an economic development project that meets certain requirements; (2) provides for five new liquor dealers and beer dealers permits under certain circumstances; and (3) requires 15 days (instead of 30 days) notice of a permit application investigation; and (4) allows the commission to increase the number of beer dealer and liquor dealer permits based on certain population data in between decennial censuses.)**

Effective: Upon passage; July 1, 2007.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 339 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 7.1-1-3-18.5 IS ADDED TO THE INDIANA
- 3 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 4 [EFFECTIVE JULY 1, 2007]: **Sec. 18.5. (a) "Grocery store" means**
- 5 **a store or part of a store that meets the following requirements:**
- 6 **(1) The establishment is known generally as:**
- 7 **(A) a supermarket, grocery store, or delicatessen, and is**
- 8 **primarily engaged in the retail sale of a general food line,**
- 9 **which may include:**
- 10 **(i) canned and frozen foods;**
- 11 **(ii) fresh fruits and vegetables; and**
- 12 **(iii) fresh and prepared meats, fish, and poultry;**
- 13 **(B) a convenience store or food mart (except as provided**
- 14 **in subsection (b)) and is primarily engaged in:**
- 15 **(i) the retail sale of a line of goods that may include milk,**
- 16 **bread, soda, and snacks; or**
- 17 **(ii) the retail sale of automotive fuels and the retail sale**
- 18 **of a line of goods that may include milk, bread, soda, and**
- 19 **snacks;**
- 20 **(C) a warehouse club, superstore, supercenter, or general**
- 21 **merchandise store and is primarily engaged in the retail**
- 22 **sale of a general line of groceries or gourmet foods in**
- 23 **combination with general lines of new merchandise, which**
- 24 **may include apparel, furniture, and appliances; or**
- 25 **(D) a specialty or gourmet food store primarily engaged in**
- 26 **the retail sale of miscellaneous specialty foods not for**

immediate consumption and not made on the premises, not including:

- (i) meat, fish, and seafood;
- (ii) fruits and vegetables;
- (iii) confections, nuts, and popcorn; and
- (iv) baked goods.

(2) The establishment meets the minimum requirement under IC 7.1-3-5-5 for annual gross sales of food for human consumption that are exempt from the state gross retail tax.

(b) The term does not include an establishment known generally as a gas station (except as provided in subsection (a)(1)(B)) that is primarily engaged in:

- (1) the retail sale of automotive fuels, which may include diesel fuel, gasohol, or gasoline; or
- (2) the retail sale of automotive fuels, which may include diesel fuel, gasohol, or gasoline and activities that may include providing repair service, selling automotive oils, replacement parts, and accessories, or providing food services.

SECTION 2. IC 7.1-2-4-13.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 13.5. (a) This section does not apply to a designated member of a local board who is an employee or officer of the commission.

(b) A local board member shall complete a training program conducted by the commission. A local board member may not be required to take a test or examination or pay a fee in order to complete the training program.

(c) The training program must include training on all of the following subjects:

- (1) An overview of Indiana alcoholic beverage law and enforcement.
- (2) Duties and responsibilities of the board concerning new permit applications, permit transfers, and renewal of existing permits.
- (3) The open door law (IC 5-14-1.5) and the public records law (IC 5-14-3).
- (4) Notice and hearing requirements.
- (5) The process for appeal of an adverse decision of the board.
- (6) Any other subject determined by the commission.

(d) A local board member must complete the training program not more than one hundred eighty (180) days after the member is appointed to the board. A local board member who does not complete the training program within the time allowed by this subsection shall be removed from the board under section 21 of this chapter.

SECTION 3. IC 7.1-2-4-22 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 22. A local board shall allow all individuals attending a public local board meeting or hearing to make oral comments at the meeting or hearing regarding the subject of the meeting or hearing. However, a local board may set a reasonable limit on the

amount of time allowed to each individual to provide oral comment.

SECTION 4. IC 7.1-2-5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. ~~Forfeiture to State.~~ An officer who makes an arrest for a violation of the provisions of this title shall seize the evidence of the commission of that violation, including any vehicle, automobile, boat, air or water craft, or other conveyance in which alcohol, alcoholic beverages, or malt articles are kept, possessed, or transported contrary to law, or contrary to a rule or regulation of the commission. The articles and vehicles mentioned in this section and in ~~IC 1971, 7.1-2-5-5 7.1-2-5-7,~~ **sections 5 through 7 of this chapter** are hereby declared forfeited to the state and shall be seized.

SECTION 5. IC 7.1-3-1-14, AS AMENDED BY P.L.165-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 14. (a) It is lawful for an appropriate permittee, unless otherwise specifically provided in this title, to sell alcoholic beverages each day Monday through Saturday from 7 a.m., prevailing local time, until 3 a.m., prevailing local time, the following day. Sales shall cease wholly on Sunday at 3 a.m., prevailing local time, and not be resumed until the following Monday at 7 a.m., prevailing local time.

(b) **Except as provided in subsection (f),** it is lawful for the holder of a retailer's permit to sell the appropriate alcoholic beverages for consumption on the licensed premises only on Sunday from 10 a.m., prevailing local time, until 12:30 a.m., prevailing local time, the following day.

(c) It is lawful for the holder of a permit under this article to sell alcoholic beverages at athletic or sports events held on Sunday upon premises that:

(1) are described in section 25(a) of this chapter;

(2) are a facility used in connection with the operation of a paved track more than two (2) miles in length that is used primarily in the sport of auto racing; or

(3) are being used for a professional or an amateur tournament; beginning one (1) hour before the scheduled starting time of the event or, if the scheduled starting time of the event is 1 p.m. or later, beginning at noon.

(d) It is lawful for the holder of a valid beer, wine, or liquor wholesaler's permit to sell to the holder of a valid retailer's or dealer's permit at any time.

(e) Notwithstanding subsection (b), if December 31 (New Year's Eve) is on a Sunday, it is lawful for the holder of a retailer's permit to sell the appropriate alcoholic beverages on Sunday, December 31, from 10 a.m., prevailing local time, until 3 a.m., prevailing local time, the following day.

(f) The governor may, by issuing an executive order, waive the hours of service restrictions under subsection (b) on a one (1) time basis if the following criteria are satisfied:

(1) The state or a municipality, or both, are hosting a public event that has the potential to benefit the state and local economy and bring prestige to the state.

(2) The event would involve at least forty thousand (40,000) people concentrated in one (1) area.

(3) If the hours of service restrictions under subsection (b) were not waived, it would potentially present negative economic consequences for retailers.

(4) The state or a municipality, or both, would potentially risk losing the opportunity to host the event because of the hours of service restriction under subsection (b).

This subsection shall be narrowly construed and applies only for the period designated in the executive order.

SECTION 6. IC 7.1-3-1.5-2, AS ADDED BY P.L.161-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. As used in this chapter, "dealer permittee" means a person who holds a ~~liquor~~ dealer permit. ~~under IC 7.1-3-10 for a package liquor store.~~

SECTION 7. IC 7.1-3-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. The holder of a brewer's permit or an out-of-state brewer holding either a primary source of supply permit or an out-of-state brewer's permit may do the following:

- (1) Manufacture beer.
- (2) Place beer in containers or bottles.
- (3) Transport beer.
- (4) Sell and deliver beer to a person holding a beer wholesaler's permit issued under IC 7.1-3-3.
- (5) If the brewer's brewery manufactures not more than twenty thousand (20,000) barrels of beer in a calendar year, do the following:
 - (A) Sell and deliver beer to a person holding a retailer or a dealer permit under this title.
 - (B) Be the proprietor of a restaurant.
 - (C) Hold a beer retailer's permit, a wine retailer's permit, or a liquor retailer's permit for a restaurant established under clause (B).
 - (D) Transfer beer directly from the brewery to the restaurant by means of:
 - (i) bulk containers; or
 - (ii) a continuous flow system.
 - (E) Install a window between the brewery and an adjacent restaurant that allows the public and the permittee to view both premises.
 - (F) Install a doorway or other opening between the brewery and an adjacent restaurant that provides the public and the permittee with access to both premises.
 - (G) Sell the brewery's beer by the glass for consumption on the premises. Brewers permitted to sell beer by the glass under this clause must furnish the minimum food requirements prescribed by the commission.
 - (H) Sell and deliver beer to a consumer at the permit premises of the brewer or at the residence of the consumer. The delivery to a consumer may be made only in a quantity**

at any one (1) time of not more than one-half (1/2) barrel, but the beer may be contained in bottles or other permissible containers.

(6) If the brewer's brewery manufactures more than twenty thousand (20,000) barrels of beer in a calendar year, own a portion of the corporate stock of another brewery that:

(A) is located in the same county as the brewer's brewery;

(B) manufactures less than twenty thousand (20,000) barrels of beer in a calendar year; and

(C) is the proprietor of a restaurant that operates under subdivision (5).

~~(7) Sell and deliver beer to a consumer at the plant of the brewer or at the residence of the consumer. The delivery to a consumer shall be made only in a quantity at any one (1) time of not more than one-half (1/2) barrel, but the beer may be contained in bottles or other permissible containers.~~

~~(8)~~ (7) Provide complimentary samples of beer that are:

(A) produced by the brewer; and

(B) offered to consumers for consumption on the brewer's premises.

~~(9)~~ (8) Own a portion of the corporate stock of a sports corporation that:

(A) manages a minor league baseball stadium located in the same county as the brewer's brewery; and

(B) holds a beer retailer's permit, a wine retailer's permit, or a liquor retailer's permit for a restaurant located in that stadium.

~~(10)~~ (9) For beer described in IC 7.1-1-2-3(a)(4):

(A) may allow transportation to and consumption of the beer on the licensed premises; and

(B) may not sell, offer to sell, or allow sale of the beer on the licensed premises.

SECTION 8. IC 7.1-3-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) The premises to be used as a warehouse by an applicant shall be described in the application for the permit. The commission shall not issue a beer wholesaler's permit to an applicant for any other warehouse or premises than that described in the application. The commission shall issue only one (1) beer wholesaler's permit to an applicant, but a permittee may be permitted to transfer ~~his~~ **the permittee's** warehouse to another location within the county **that is not required to be within the corporate limits of an incorporated city or town**, upon application to, and approval of, the commission.

(b) As used in this subsection, "immediate relative" means the father, the mother, a brother, a sister, a son, or a daughter of a wholesaler permittee. Notwithstanding subsection (a), the commission, upon the death or legally adjudged mental incapacitation of a wholesaler permittee, may allow the transfer of the wholesaler permit only to an immediate relative of the wholesaler permittee who concurrently holds a majority share in a valid wholesaler permit.

SECTION 9. IC 7.1-3-3-5, AS AMENDED BY P.L.224-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2007]: Sec. 5. (a) The holder of a beer wholesaler's permit may purchase and import from the primary source of supply, possess, and sell at wholesale, beer and flavored malt beverages manufactured within or without this state.

(b) A beer wholesaler permittee may possess, transport, sell, and deliver beer to:

(1) another beer wholesaler authorized by the brewer to sell the brand purchased;

(2) ~~a consumer~~; **an employee**; or

(3) a holder of a beer retailer's permit, beer dealer's permit, temporary beer permit, dining car permit, boat permit, airplane permit, or supplemental caterer's permit;

located within this state. The sale, transportation, and delivery of beer shall be made only from inventory that has been located on the wholesaler's premises before the time of invoicing and delivery.

(c) ~~Delivery of beer to a consumer shall be made in barrels only with the exception of~~ The beer wholesaler's bona fide regular employees ~~who~~ may purchase beer from the wholesaler in:

(1) bottles, cans, or any other type of permissible containers in an amount not to exceed forty-eight (48) pints; **or**

(2) **one (1) keg**;

at any one (1) time.

(d) The importation, transportation, possession, sale, and delivery of beer shall be subject to the rules of the commission and subject to the same restrictions provided in this title for a person holding a brewer's permit.

(e) The holder of a beer wholesaler's permit may purchase, import, possess, transport, sell, and deliver any commodity listed in IC 7.1-3-10-5, unless prohibited by this title. However, a beer wholesaler may deliver flavored malt beverages only to the holder of one (1) of the following permits:

(1) A beer wholesaler or wine wholesaler permit, if the wholesaler is authorized by the primary source of supply to sell the brand of flavored malt beverage purchased.

(2) A wine retailer's permit, wine dealer's permit, temporary wine permit, dining car wine permit, boat permit, airplane permit, or supplemental caterer's permit.

(f) A beer wholesaler may:

(1) store beer for an out-of-state brewer described in IC 7.1-3-2-9 and deliver the stored beer to another beer wholesaler that the out-of-state brewer authorizes to sell the beer;

(2) perform all necessary accounting and auditing functions associated with the services described in subdivision (1); and

(3) receive a fee from an out-of-state brewer for the services described in subdivisions (1) through (2).

SECTION 10. IC 7.1-3-5-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 4. (a) Notwithstanding IC 7.1-3-18.5, the commission may renew or transfer ownership of a beer dealer's permit for a beer dealer who:**

(1) held a permit before July 1, 2007; and

(2) does not qualify for a permit as a grocery store under IC 7.1-1-3-18.5.

(b) The commission may transfer ownership of a beer dealer's permit under this section only to an applicant who is the proprietor of:

- (1) a drug store;
- (2) a grocery store (as defined by IC 7.1-1-3-18.5); or
- (3) a package liquor store.

SECTION 11. IC 7.1-3-5-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) As used in this section, "annual gross sales of food" refers to annual gross sales of food for human consumption that are exempt from the state gross retail tax.

(b) To be eligible for a permit for a grocery store under this title, an establishment must have at least forty-eight thousand dollars (\$48,000) in annual gross sales of food. However, the figure set in this subsection as the minimum annual gross sales of food for an establishment is subject to adjustment under subsection (c).

(c) The commission shall annually adjust the minimum amount of annual gross sales of food initially set in subsection (b) by an amount that does not exceed the percent of increase in the United States Department of Labor Consumer Price Index during the calendar year preceding the calendar year in which an increase is established. The commission shall determine which consumer price index shall be applied in determining the adjustment under this subsection.

SECTION 12. IC 7.1-3-5-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) As used in this section "annual gross sales of food" refers to annual gross sales of food for human consumption that are exempt from the state gross retail tax.

(b) The holder of a permit issued to a grocery store shall annually report to the commission the amount of the permit holder's establishment's annual gross sales of food. The information provided to the commission under this subsection regarding the amount of annual gross sales of food is confidential information and may not be disclosed to the public under IC 5-14-3. However, the commission may disclose the information:

- (1) to the department of state revenue for the purpose of verifying the accuracy of the annual gross sales of food reported to the commission under this subsection; and
- (2) in any administrative or judicial proceeding to revoke or suspend the holder's permit as a result of a discrepancy discovered by the department of state revenue under subsection (c).

(c) The department of state revenue shall verify the accuracy of the reports provided to the commission under this section. The department of state revenue shall report to the commission any discrepancy that the department discovers between:

- (1) the amount of annual gross sales of food that the permit holder has reported to the department; and

(2) the amount of annual gross sales of food that the permit holder has reported to the commission.

(d) Notwithstanding IC 6-8.1-7-1 or any other law, in fulfilling its obligations under this section, the department of state revenue may provide to the commission confidential information. The commission shall maintain the confidentiality of information provided by the department of state revenue under this section. However, the commission may disclose the information in any administrative or judicial proceeding to revoke or suspend the holder's permit as a result of a discrepancy discovered by the department of state revenue under subsection (c).

SECTION 13. IC 7.1-3-9-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11. (a) A liquor retailer may allow customers to sample the following:

(1) Beer.

(2) Wines.

(3) Liquors.

(4) Liqueurs and cordials (as defined in 27 CFR 5.22(h)).

(5) Flavored malt beverages.

(6) Hard cider.

(b) Sampling is permitted only:

(1) on the liquor retailer's permit premises; and

(2) during the permittee's regular business hours.

(c) A liquor retailer may not charge for the samples provided to customers.

(d) Sample size of wines may not exceed one (1) ounce.

(e) In addition to the other provisions of this section, a liquor retailer who allows customers to sample liquors, liqueurs, or cordials shall comply with all of the following:

(1) A liquor retailer may allow a customer to sample only a combined total of two (2) liquor, liqueur, or cordial samples per day.

(2) Sample size of liqueurs or cordials may not exceed one-half (1/2) ounce.

(3) Sample size of liquors may not exceed four-tenths (0.4) ounce.

(f) A sample size of beer, **flavored malt beverage, or hard cider** may not exceed six (6) ounces.

SECTION 14. IC 7.1-3-10-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 13. (a) A liquor dealer permittee who is a proprietor of a package liquor store may allow customers to sample the following:

(1) Beer.

(2) Wines.

(3) Liquors.

(4) Liqueurs and cordials (as defined in 27 CFR 5.22(h)).

(5) Flavored malt beverages.

(6) Hard cider.

(b) Sampling is permitted:

(1) only on the package liquor store permit premises; and

(2) only during the store's regular business hours.

(c) No charge may be made for the samples provided to the

1 customers.

2 (d) Sample size of wines may not exceed one (1) ounce.

3 (e) In addition to the other provisions of this section, a proprietor
4 who allows customers to sample liquors, liqueurs, or cordials shall
5 comply with all of the following:

6 (1) A proprietor may allow a customer to sample not more than a
7 combined total of two (2) liquor, liqueur, or cordial samples per
8 day.

9 (2) Sample size of liqueurs or cordials may not exceed one-half
10 (1/2) ounce.

11 (3) Sample size of liquors may not exceed four-tenths (0.4) ounce.

12 (f) **A sample size of beer, flavored malt beverage, or hard cider**
13 **may not exceed six (6) ounces.**

14 SECTION 15. IC 7.1-3-13-3.5 IS ADDED TO THE INDIANA
15 CODE AS A NEW SECTION TO READ AS FOLLOWS
16 [EFFECTIVE JULY 1, 2007]: **Sec. 3.5. (a) A wine wholesaler may**
17 **sell wine purchased from an estate sale only if the following**
18 **requirements are met:**

19 (1) **The primary source of the wine sold at auction:**

20 (A) **is authorized to sell wine in Indiana on the date the**
21 **wine is resold by the wholesaler;**

22 (B) **is given notice of the purchase by the wine wholesaler;**
23 **and**

24 (C) **authorizes the wine wholesaler to resell the wine**
25 **purchased.**

26 (2) **The seller of wine at auction is a bona fide estate of an**
27 **Indiana decedent.**

28 (3) **Each wine bottle is affixed with a sticker indicating that**
29 **the wine was purchased from an estate.**

30 (b) **The notice given to the primary source under subsection**
31 **(a)(1) must include the following information:**

32 (1) **The name of the seller.**

33 (2) **The amount of the product purchased and the sale price at**
34 **auction.**

35 (3) **The vintage of the wine purchased.**

36 (c) **A wholesaler is not liable for product liability for wine that**
37 **the wholesaler sells from an estate auction purchase.**

38 SECTION 16. IC 7.1-3-17.5-6 IS AMENDED TO READ AS
39 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. Notwithstanding
40 IC 7.1-5-5-7, the holder of an excursion and adjacent landsite permit
41 may, subject to the approval of the commission, provide alcoholic
42 beverages to guests without charge at an event on the licensed premises
43 if all the following requirements are met:

44 ~~(1) The event is attended by not more than six hundred fifty (650)~~
45 ~~guests.~~

46 ~~(2) The event is not more than six (6) hours in duration.~~

47 ~~(3) (1) Each alcoholic beverage dispensed to a guest:~~

48 (A) **is entered into a cash register that records and itemizes on**
49 **the cash register tape each alcoholic beverage dispensed; and**

50 (B) **is entered into a cash register as a sale and at the same**
51 **price that is charged to the general public.**

~~(4)~~ (2) At the conclusion of the event, all alcoholic beverages recorded on the cash register tape are paid by the holder of the excursion and adjacent landsite permit.

~~(5)~~ (3) All records of the alcoholic beverage sales, including the cash register tape, shall be maintained by the holder of the excursion and adjacent landsite permit for not less than two (2) years.

~~(6)~~ (4) The holder of the excursion and adjacent landsite permit complies with the rules of the commission.

SECTION 17. IC 7.1-3-19-5, AS AMENDED BY P.L.224-2005, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007] Sec. 5. The commission shall cause one (1) notice of the pending investigation to be published in a newspaper in accordance with the provisions of IC 7.1-3-1-18. The publication of the notice shall be at least ~~thirty (30)~~ **fifteen (15)** days before the investigation.

SECTION 18. IC 7.1-3-19-10.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 10.5. (a) This section applies only to an application for:**

(1) a new permit for a grocery store or package liquor store; or

(2) transfer of a location of an existing permit for a grocery store or package liquor store.

(b) Upon application for a new dealer permit or transfer of a location of an existing dealer permit, the local board shall investigate the desirability of the permit in regard to the potential geographic location of the permit premises.

(c) In investigating the desirability of a dealer permit under subsection (b), the local board may consider the following:

(1) Whether there is a need for the services at the requested location of the dealer permit.

(2) The desire of the neighborhood or the community to receive the services.

(3) The impact of the services on other business in the neighborhood or community.

(4) The impact of the services on the neighborhood or community.

SECTION 19. IC 7.1-3-19-11.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 11.5. (a) As used in this section, "applicant" or "application" means an applicant or an application for:**

(1) a new permit; or

(2) transfer or renewal of an existing permit.

(b) This section applies if a permit applicant or a person who remonstrates at a local board hearing against the approval of the application files with the commission:

(1) an objection to the commission's action on the application; and

(2) a request for an appeal hearing before the commission.

(c) The commission shall do the following:

(1) Provide notice to the local board, by first class mail, of the date of an appeal hearing set by the commission. Notice under this subdivision must be provided not later than ten (10) days before the date of the hearing.

(2) Publish notice in the city, town, or county where the proposed permit premises is located of the date of an appeal hearing set by the commission. Notice under this subdivision must be published not later than ten (10) days before the date of the hearing.

SECTION 20. IC 7.1-3-20-16.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 16.2. (a) This section does not apply to a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000).**

(b) A permit that is authorized by this section may be issued without regard to the quota provisions of IC 7.1-3-22.

(c) Notwithstanding any other law, the commission may issue not more than the maximum number of new three-way permits to sell alcoholic beverages for on-premises consumption determined by the legislative body of the city, town, or county under subsection (d) to applicants, each of whom must be the proprietor, as owner or lessee, or both, of a restaurant located within an economic development project that meets all of the following requirements:

(1) The boundaries of the project are designated by an ordinance or as a resolution adopted by the legislative body (as defined in IC 36-1-2-9) of a:

(A) city or town if the project is located in the city or town; or

(B) county where the project is located if the project is located outside of a city or town.

(2) The project consists of an investment of at least twenty-five million dollars (\$25,000,000).

(3) The project is located within an economic development area, an area needing redevelopment, or a redevelopment district under IC 36-7-14.

(e) The legislative body (as defined in IC 36-1-2-9) of a:

(1) city or town if the project is located in the city or town; or

(2) county where the project is located if the project is located outside of a city or town;

shall determine the number of permits that the commission may issue under this section but the number of permits may not exceed eight (8) permits.

(f) The commission shall conduct an auction of the permits under IC 7.1-3-22-9, except that the auction may be conducted at any time as determined by the commission. Notwithstanding any other law, the minimum bid for an initial license under this subsection is fifty thousand dollars (\$50,000), and the renewal fee for a license under this subsection is five hundred dollars (\$500).

(g) This section expires July 1, 2009.

SECTION 21. IC 7.1-3-22-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 4. Dealers' Permits**

~~Limited:~~ (a) Except as provided under subsections (e) and (h), the commission may grant only:

(1) one (1) beer dealer's permit ~~and in an incorporated city or town that has a population of less than fifteen thousand one (15,001) for each two thousand (2,000) persons, or fraction thereof, within the incorporated city or town;~~

(2) in an incorporated city or town that has a population of more than fifteen thousand (15,000) but less than eighty thousand (80,000):

(A) one (1) beer dealer's permit for each three thousand five hundred (3,500) persons, or a fraction thereof; or

(B) eight (8) beer dealer's permits;

whichever is greater, within the incorporated city or town; and

(3) in an incorporated city or town that has a population of at least eighty thousand (80,000):

(A) one (1) beer dealer's permit for each six thousand (6,000) persons, or a fraction thereof; or

(B) twenty-three (23) beer dealer's permits;

whichever is greater, within the incorporated city or town.

(b) Except as provided under subsections (f) and (h), the commission may grant only:

(1) one (1) liquor dealer's permit in an incorporated city or town ~~or unincorporated town that has a population of less than fifteen thousand one (15,001) for each one two thousand five hundred (1,500) (2,000) persons, or fraction thereof, within the incorporated city or town; or unincorporated town;~~

(2) in an incorporated city or town that has a population of more than fifteen thousand (15,000) but less than eighty thousand (80,000):

(A) one (1) liquor dealer's permit for each three thousand five hundred (3,500) persons, or a fraction thereof; or

(B) eight (8) liquor dealer's permits;

whichever is greater, within the incorporated city or town; and

(3) in an incorporated city or town that has a population of at least eighty thousand (80,000):

(A) one (1) liquor dealer's permit for each six thousand (6,000) persons, or a fraction thereof; or

(B) twenty-three (23) liquor dealer's permits;

whichever is greater, within the incorporated city or town.

(c) Except as provided under subsections (e), (f), and (h), the commission may grant only one (1) beer dealer's permit and one (1) liquor dealer's permit in an area in a county outside an incorporated city or town for each three thousand (3,000) persons, or fraction thereof, within an area in the county outside an incorporated city or town.

(d) Notwithstanding subsections (a), (b), and (c), the commission may renew or transfer a beer dealer's or liquor dealer's permit for a beer dealer or liquor dealer that:

(1) held a permit before July 1, 2007; and

(2) does not qualify for a permit under the quota restrictions set forth in subsection (a), (b), or (c).

(e) Notwithstanding subsection (a) or (c), the commission shall grant not more than five (5) new beer dealer's permits for each of the following:

(1) An incorporated city or town that does not qualify for any new beer dealer's permits under the quota restrictions set forth in subsection (a).

(2) An area in a county outside an incorporated city or town that does not qualify for any new beer dealer's permits under the quota restrictions set forth in subsection (c).

(f) Notwithstanding subsection (b) or (c), the commission shall grant not more than five (5) new liquor dealer's permits for each of the following:

(1) An incorporated city or town that does not qualify for any new liquor dealer's permits under the quota restrictions set forth in subsection (b).

(2) An area in a county outside an incorporated city or town that does not qualify for any new liquor dealer's permits under the quota restrictions set forth in subsection (c).

(g) If after the 2010 decennial census, the incorporated city or town or an area in a county outside an incorporated city or town is authorized by the quota restrictions under this section to receive additional beer dealer's permits or liquor dealer's permits, the five (5) new:

(1) beer dealer's permits issued under subsection (e) shall be subtracted from any additional beer dealer's permits that the incorporated city or town or the area in a county outside an incorporated city or town may be authorized to receive by the quota provisions; and

(2) liquor dealer's permits issued under subsection (f) shall be subtracted from any additional liquor dealer's permits that the incorporated city or town or the area in a county outside an incorporated city or town may be authorized to receive by the quota provisions.

SECTION 22. IC 7.1-3-22-4.5 IS ADDED TO THE INDIANA CODE A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4.5. (a) Notwithstanding section 4 of this chapter, the commission may increase the number of beer dealer's permits and liquor dealer's permits for an incorporated city or town or area in a county outside of an incorporated city or town if the population of the city or town or area in a county outside of an incorporated city or town increases between the decennial censuses.

(b) The commission shall base its determination to increase the number of beer dealer's permits or liquor dealer's permits for an incorporated city or town or area in a county outside of an incorporated city or town on appropriate data as determined by the commission.

SECTION 23. IC 7.1-3-26-15, AS ADDED BY P.L.165-2006, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2007]: Sec. 15. (a) Except as provided in subsections (b) and (c), a seller who violates this chapter commits a Class A infraction.

(b) Except as provided in subsection (d), a seller who:

(1) knowingly or intentionally violates this chapter; and

(2) has one (1) prior unrelated conviction or judgment for an infraction under this section for an act or omission that occurred not more than ten (10) years before the act or omission that is the basis for the most recent conviction or judgment for an infraction;

commits a Class A misdemeanor.

(c) Except as provided in subsection (d), a seller who:

(1) knowingly or intentionally violates this chapter; and

(2) has at least two (2) prior unrelated convictions or judgments for infractions under this section for acts or omissions that occurred not more than ten (10) years before the act or omission that is the basis for the most recent conviction or judgment for an infraction;

commits a Class D felony.

(d) A person who violates section 6(5) of this chapter commits a Class A infraction. The commission may consider an infraction committed under this subsection in its determination of whether to renew a seller's permit. **However, a person may not be held in violation of section 6(5) of this chapter for a direct sale and shipment to a person that occurred before January 15, 2007.**

SECTION 24. IC 7.1-4-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. ~~Use of Funds.~~ The monies deposited in the postwar construction fund shall be used for construction by the state for the use of **public safety**, penal, benevolent, charitable, and educational institutions of the state.

SECTION 25. IC 7.1-5-7-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) ~~It is a Class C misdemeanor for~~ A person ~~to who~~ recklessly ~~sells, barter, exchange, provide, or furnish~~ **sells, barters, exchanges, provides, or furnishes** an alcoholic beverage to a minor **commits:**

(1) a Class B misdemeanor if the person is at least twenty-one (21) years of age; and

(2) a Class C misdemeanor if the person is less than twenty-one (21) years of age.

(b) This section shall not be construed to impose civil liability upon any educational institution of higher learning, including but not limited to public and private universities and colleges, business schools, vocational schools, and schools for continuing education, or its agents for injury to any person or property sustained in consequence of a violation of this section unless such institution or its agent sells, barters, exchanges, provides, or furnishes an alcoholic beverage to a minor.

SECTION 26. IC 7.1-5-7-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 16. The commission shall conduct random unannounced inspections at locations where alcoholic beverages are sold or distributed to ensure compliance with this title. Only the commission, an Indiana law enforcement agency, the office of**

the sheriff of a county, or an organized police department of a municipal corporation may conduct the random unannounced inspections. These entities may use retired or off duty law enforcement officers to conduct inspections under this section.

SECTION 27. IC 7.1-5-7-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 17. (a) Notwithstanding any other law, an enforcement officer vested with full police powers and duties may engage a person who is:

(1) at least eighteen (18) years of age; and

(2) less than twenty-one (21) years of age;

to receive or purchase alcoholic beverages as part of an enforcement action under this article.

(b) The initial or contemporaneous receipt or purchase of an alcoholic beverage under this section by a person described in subsection (a) must:

(1) occur under the direction of an enforcement officer vested with full police powers and duties; and

(2) be a part of the enforcement action.

SECTION 28. IC 7.1-5-7-18 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 18. (a) The commission may impose a civil penalty under this section, in addition to any other penalty, against a retailer or dealer permittee. If the retailer or dealer permittee, or an agent or employee of the retailer or dealer permittee violates section 8 of this chapter on the licensed premises, a civil penalty may be imposed against the retailer or dealer permittee as follows:

(1) If the licensed premises at that specific business location has not been issued a citation or summons for a violation of this section in the previous ninety (90) days, a civil penalty of two hundred fifty dollars (\$250).

(2) If the licensed premises at that specific business location has had one (1) citation or summons issued for a violation of this section in the previous ninety (90) days, a civil penalty of five hundred dollars (\$500).

(3) If the licensed premises at that specific business location has had two (2) citations or summonses issued for a violation of this section in the previous ninety (90) days, a civil penalty of one thousand dollars (\$1,000).

(4) If the licensed premises at that specific business location has had three (3) or more citations or summonses issued for a violation of this section in the previous ninety (90) days, a civil penalty of two thousand dollars (\$2,000).

A retailer or dealer permittee may not be issued a citation or summons for a violation of this section more than once every twenty-four (24) hours.

(b) The defenses set forth in section 5.1 of this chapter are available to a retailer or dealer permittee in an action under this section.

(c) Unless a person less than twenty-one (21) years of age buys or receives an alcoholic beverage under the direction of a law

1 enforcement officer as part of an enforcement action, a retailer or
 2 dealer permittee that sells alcoholic beverages is not liable for a
 3 violation of this section unless the person less than twenty-one (21)
 4 years of age who bought or received the alcoholic beverage is
 5 charged for violating section 7 of this chapter.

6 (d) All civil penalties collected under this section shall be
 7 deposited in the alcohol and tobacco commission's enforcement
 8 and administration fund under IC 7.1-4-10.

9 SECTION 29. IC 7.1-5-10-1 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) Except as
 11 provided in subsection ~~(d)~~; (c), it is unlawful to sell alcoholic beverages
 12 at the following times:

13 (1) At a time other than that made lawful by the provisions of
 14 IC 7.1-3-1-14.

15 (2) On Christmas Day and until 7:00 o'clock in the morning,
 16 prevailing local time, the following day.

17 (3) On primary election day, and general election day, from 3:00
 18 o'clock in the morning, prevailing local time, until the voting polls
 19 are closed in the evening on these days.

20 (4) During a special election under IC 3-10-8-9 (within the
 21 precincts where the special election is being conducted), from
 22 3:00 o'clock in the morning until the voting polls are closed in the
 23 evening on these days.

24 (b) During the time when the sale of alcoholic beverages is
 25 unlawful, no alcoholic beverages shall be sold, dispensed, given away,
 26 or otherwise disposed of on the licensed premises and the licensed
 27 premises shall remain closed to the extent that the nature of the
 28 business carried on the premises, as at a hotel or restaurant, permits.

29 ~~(c) It is unlawful to sell alcoholic beverages on New Years Day for~~
 30 ~~off-premises consumption.~~

31 ~~(d)~~ (c) It is lawful for the holder of a valid beer, wine, or liquor
 32 wholesaler's permit to sell to the holder of a valid retailer's or dealer's
 33 permit at any time.

34 SECTION 30. IC 9-21-4-5, AS AMENDED BY HEA 1012-2007,
 35 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2007]: Sec. 5. (a) Except as provided in subsection (b), a
 37 person may not place or maintain upon a highway a traffic sign or
 38 signal bearing commercial advertising. A public authority may not
 39 permit the placement of a traffic sign or signal that bears a commercial
 40 message.

41 (b) Under criteria to be jointly established by the Indiana
 42 department of transportation and the office of tourism development, the
 43 Indiana department of transportation may authorize the posting of any
 44 of the following:

45 (1) Limited tourist attraction signage.

46 (2) Business signs on specific information panels on the interstate
 47 system of highways and other freeways.

48 All costs of manufacturing, installation, and maintenance to the Indiana
 49 department of transportation for a business sign posted under this
 50 subsection shall be paid by the business.

51 (c) Criteria established under subsection (b) for tourist attraction

signage must include a category for a tourist attraction that:
(1) is a trademarked destination brand; and
(2) encompasses buildings, structures, sites, or other facilities that are:

(A) listed on the National Register of Historic Places established under 16 U.S.C. 470 et seq.; or

(B) listed on the register of Indiana historic sites and historic structures established under IC 14-21-1;

regardless of the distance of the tourist attraction from the highway on which the tourist attraction signage is placed.

(d) Criteria established under subsection (b) for tourist attraction signage must include a category for a tourist attraction that is an establishment licensed under IC 7.1-3-2-7(5).

~~(c)~~ (e) A person may not place, maintain, or display a flashing, a rotating, or an alternating light, beacon, or other lighted device that:

(1) is visible from a highway; and

(2) may be mistaken for or confused with a traffic control device or for an authorized warning device on an emergency vehicle.

~~(d)~~ (f) This section does not prohibit the erection, upon private property adjacent to highways, of signs giving useful directional information and of a type that cannot be mistaken for official signs.

SECTION 31. IC 34-30-2-19.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 19.5. IC 7.1-3-13-3.5 (Concerning wine purchased at an estate sale and resold by a wine wholesaler).**

SECTION 32. [EFFECTIVE JULY 1, 2007] (a) **Notwithstanding IC 7.1-2-4-13.5, as added by this act, a member of a local board appointed before January 1, 2008, shall complete the training required under IC 7.1-2-4-13.5, as added by this act, not later than July 1, 2008.**

(b) **The alcohol and tobacco commission shall begin providing a training program under IC 7.1-2-4-13.5, as added by this act, for members of local boards not later than January 1, 2008.**

(c) **This SECTION expires July 2, 2008.**

SECTION 33. [EFFECTIVE UPON PASSAGE] (a) **The legislative council shall assign an interim or a statutory committee to study the topic of alcoholic beverage permittee liability insurance. The committee shall study issues that relate to liability insurance for damages that arise out of the person's sale of alcoholic beverages.**

(b) **This SECTION expires November 1, 2007.**

SECTION 34. [EFFECTIVE JULY 1, 2007] **IC 7.1-5-7-8, as amended by this act, and IC 7.1-5-7-18, as added by this act, apply only to offenses committed after June 30, 2007.**

SECTION 35. **An emergency is declared for this act.**

(Reference is to ESB 339 as reprinted April 11, 2007.)

Conference Committee Report

on
Engrossed Senate Bill 339

Signed by:

Senator Merritt
Chairperson

Representative Van Haaften

Senator Lanane

Representative Welch

Senate Conferees

House Conferees